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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/501,872

10/13/2004

Naoyuki Kojima

120467

6557

25944

7590

03/27/2007

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EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/501,872

Applicant(s)

KOJIMA ET AL.

Examiner

Brent T. O'Hern

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date AUG 29 2005
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 29 August 2005 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation “**the molding operation**” in line 3. There is **insufficient antecedent basis** for this limitation in the claim.

Claim 3 recites the limitation “**with both layers**” in line 2. There is **insufficient antecedent basis** for this limitation in the claim.

Clarification and/or correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Bagrodia et al. (US 6,552,113).

Regarding claims 1, 4, 6 and 10 Bagrodia ('113) teaches a polyethylene terephthalate-based resin container having an oxygen-capturing property (*See col. 12, ll. 36-44 wherein the "oxygen scavengers" are interpreted as having an oxygen-capturing property.*) and an oxygen barrier property (*See col. 2, ll. 8-21 wherein MXP6 has an oxygen barrier property.*).

The phrases **"which have been improved by treating said container with radiation after the molding operation"** in claim 1, lines 2-3, **"wherein the polyethylene terephthalate resin to be used is blended with an oxygen barrier resin at a rate in the range of 1.0 to 30 wt.%"** in claim 4, lines 2-3, **"wherein said container is treated with radiation at a dose of 20 kGy or more"** in claim 6, lines 2-3, and **"wherein an electron beam is used as the source of radiation"** in claim 10,

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lines 2-3 are **process limitations** in a product claim and hence not given any patentable weight since patentability of a product does not depend on its method of production (see *MPEP* § 2173.05(p)).

Regarding claim 2, Bagrodia ('113) teaches wherein the container comprises a single layer of the polyethylene terephthalate resin (*col. 2, ll. 8-21*).

Regarding claim 3, Bagrodia ('113) teaches wherein the container has at least an inner layer and an outer layer, with both layers comprising the polyethylene terephthalate-based resin (*col. 2, ll. 8-21, col. 23, ll. 59-61*).

Regarding claim 5, Bagrodia ('113) teaches wherein the oxygen barrier resin is a polyxylylene diamine adipamide resin (Nylon-MXD6) (*col. 2, ll. 8-21*).

Regarding claims 7 and 9, Bagrodia ('113) teaches wherein the container has at least an intermediate layer comprising an oxygen barrier resin (*col. 19, l. 29-37 and col. 23, ll. 59-61*).

The phrase "**wherein radiation is applied to said container at a dose of 6 kGy or more**" in claim 9, lines 2-3 are **process limitations** in a product claim and hence not given any patentable weight since patentability of a product does not depend on its method of production (see *MPEP* § 2173.05(p)).

Regarding claim 8, Bagrodia ('113) teaches wherein the oxygen barrier resin is a polyxylylene diamine adipamide resin (Nylon-MXD6) (*col. 2, ll. 8-21*).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571) 272-0496. The examiner can normally be reached on M-F, 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-2172. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BTO

Brent T O'Hern
Examiner
Art Unit 1772
March 22, 2007

 3/26/07
NASSER AHMAD
PRIMARY EXAMINER